UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

10 Civ. 3335

and

OPINION

CAROL ENGLE, VIRGINIA MONCADA, STACIE EDWARDS-MELCHOR, KIMBERLY SMITH, and AMY MARTLETT,

Intervenor-Plaintiffs,

-against-

STANLEY KATZ and WILLIAM BARNASON, as Owner and Manager of 144 West 73rd Street, 140 West 7th Street, and 142 West 75th Street, New York, New York,

Defendants,

and

STEPHEN KATZ,

Intervenor-Defendant.

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Sweet, D.J.

Defendant Stanley Katz ("Katz" or the "Defendant") has moved pursuant to Federal Rule of Civil Procedure 56 to dismiss the complaint of the United States (the "United States" or the "Plaintiff") and the complaint of intervenors Carol Engle ("Engle"), Virginia Moncada ("Moncada"), Stacie Edwards-Melchor ("Edwards-Melchor"), Kimberly Smith ("Smith") and Amy Martlett ("Martlett") (collectively, the "Intervenors"). Based on the facts and conclusions set forth below, the motion is denied.

Prior Proceedings

On April 20, 2010, the United States filed a Complaint against Katz and his then-superintendent, the defendant William Barnason ("Barnason"), alleging violations of the Fair Housing Act. The United States charged Katz and Barnason with subjecting female residents of Katz's properties to severe and repeated acts of sexual harassment, alleging that Barnason routinely solicited sexual favors in exchange for housing benefits, made unwanted verbal and physical sexual advances on female tenants, and conditioned terms, conditions, and

privileges of female tenants' tenancy on the granting of sexual favors. (See Compl. ¶¶ 10, 11, 12, 14, 16.) Katz is alleged to have been aware of Barnason's conduct, yet refused to take any meaningful steps to address the situation. (Compl. ¶ 13). The United States' Complaint seeks monetary damages, civil penalties, punitive damages, and injunctive relief against Defendants. (Compl. Prayer for Relief). On July 9, 2010, the Intervenors intervened in the United States' action and filed Fair Housing Act claims specifically on behalf of Engle, Smith, Moncada, Martlett, and Edwards-Melchor.

Katz moved for summary judgment on the ground of res judicata, and his motion was heard on February 9, 2011.

The Facts

No Local Rule 56.1 Statement was filed by Katz, but he and his attorney filed affidavits reciting facts relating to prior proceedings in the Housing part of the Civil Court of the City of New York (the "Housing Court"). The Intervenors have filed Intervenor Plaintiffs' Determinations of Undisputed and Disputed Facts. The United States has submitted a factual

statement based on the pleadings and the Housing Court proceedings. The facts, derived from these materials, are not disputed except as noted below.

Defendant Stanley Katz is the owner of three residential rental properties located at 144 West 73rd Street, 140 West 75th Street, and 142 West 75th Street, New York, New York (the "Properties"). The Intervenor Plaintiffs each formerly resided at the Properties. During that time, Barnason served as Katz's employee and agent with respect to the properties.

Katz initiated proceedings in Housing Court against each of the Intervenor Plaintiffs, initiating each case by a petition alleging non-payment of rent and seeking eviction. Specifically, Katz brought summary proceedings against Engle on March 18, 2009, and again on October 15, 2009; against Smith on November 25, 2008; against Moncada on July 14, 2009; and against Martlett and Edwards-Melchor on July 22, 2009. As a result of the Housing Court proceedings, Katz obtained judgments of eviction and for monetary payment against the Intervenor Plaintiffs with the exception of Martlett and Edwards-Melchor.

In the course of their respective Housing Court proceedings, the Intervenor Plaintiffs raised allegations of harassment, and in each case the Housing Court specifically declined to entertain the Intervenor Plaintiffs' claims of harassment. With respect to Engle and Martlett, Katz opposed litigating their allegations of harassment on the basis that such charges were irrelevant to summary non-payment proceedings. As to Smith and Moncada, the Housing Court specifically reserved their right to raise their respective sexual harassment claims in another forum, recognizing that the Housing Court was not the appropriate forum for such allegations.

With respect to Engle's Housing Court proceedings, she made no mention of the sexual harassment and raised defenses of rent overcharge and breach of warranty of habitability in her pre-written Answer form supplied by the Housing Court. During the trial held on September 4, 2009 relating to Engle's first eviction proceeding, the Housing Court stated that any evidence she proffered regarding Barnason would be excluded because it was irrelevant. In the Matter of Stanley Katz v. Carol Engle and Arthur Caine, Index No. 62122/2009, Trial Transcript, at

page 59 (finding that Barnason's status as a registered sex offender is "not really relevant to this particular case.")

On September 4, 2009, the petition was dismissed without prejudice on the ground that Katz failed to prove an adequate multiple dwelling registration for the subject building, in violation of Multiple Dwelling Law § 325.

In October 2009, Katz commenced a second action against Engle for rent nonpayment. In the Answer she submitted pro se, Engle checked off the defenses of illegal rent claim and breach of warranty of habitability on a pre-written form. Engle also handwrote on the Answer form a summary of her claims, which mentions a hostile housing environment. At trial on January 4, 2010, Engle again defended on the grounds of rent overcharge and breach of warranty of habitability.

Engle attempted twice to proffer her own testimony regarding the inappropriate conduct of Defendants Barnason and Katz, Katz objected to the testimony, and the Court sustained those objections.

After the trial a decision was issued in favor of Katz, evicting Engle from 140 West 75th Street, and ordering her to pay $24,620 in back rent. The seven-page decision described Engle's defenses or counterclaims of rent overcharge and apartment disrepair amounting to a breach of the warranty of habitability.

One month after the January 4th trial, Engle pro se brought an Order to Show Cause (OSC), seeking vacatur of the decision. On the pre-written form, Engle checked off one of the pro-forma defenses listed on the form, which states: "I have been harassed" but provided no further explanation of that defense. Engle also wrote under the Category entitled "Excuse" the following: "William Barnason sex offender retaliation."

The three post-trial motions brought by Engle were denied by order of April 27, 2010 on the grounds that reopening the case and considering additional evidence would not change the result. Thereafter, Engle filed an appeal in the Appellate Term of the First Department based on the denial of Engle's rent overcharge defense.

Katz initiated eviction proceedings against Intervenor Smith in November 2008. See Notice of Petition and Petition for Non-Payment, Index No. 95519/2008, ("Smith Petition"). Katz sought Smith's eviction from an apartment at 142 West 75th Street, back rent of $4,220, and attorneys' fees and costs. Id.

With respect to the Housing Court proceedings against Smith, Smith failed to Answer the Petition, and the Court issued a judgment of possession in favor of Katz. Smith filed a pro se OSC seeking to vacate the April 14th judgment against her and submitted an Affidavit in support of her OSC, which she completed herself by filling out a form prepared by and from the Housing Court. She wrote her initials next to several defenses listed, including "I have been harassed." Smith also wrote by hand: "Sexual Harassment, space so small as to be dangerous, injurious and unlawful unconscionable egregious, sexual harassment level 3 sex offend[.]"

With the assistance of an attorney, Smith entered into a Stipulation of Settlement with Katz. The agreement specifically preserves Smith's right to bring this action against Defendants in ¶ 11 ("Except as provided herein, this

agreement is without prejudice to either parties['] right to seek monetary judgment in any other forum of competent jurisdiction."). When Smith breached the settlement agreement by failing to make timely rental payments, she was evicted and ordered to pay back rent.

With respect to the Housing Court proceedings against Moncada, she also filed an Answer pro se using a form provided by the Housing Court and selected several defenses, including improper service, rent overcharge, and a breach of the warranty of habitability.

On September 29, 2009, Katz and Moncada entered into a settlement agreement which set forth a payment schedule for back rent owed and stayed the eviction so long as Moncada made the agreed upon payments. This agreement was "So Ordered" by the Housing Court. On March 2, 2010, Moncada moved by OSC to stay her eviction, claiming that she had made payments per the September 29th Agreement and was current on her rent. In her Affidavit, Moncada also sought to have the September 29th Agreement "voided due to invalid Stipulation" and proffered an "Amicus Curiae Brief". A section of the Brief entitled "Factual

Background" described how Barnason attempted to sexually assault Moncada and proffered an eye-witness affidavit. The Court denied Moncada's motion and declined to consider the Amicus Curiae Brief because it, inter alia, "argue[d] matters not raised by respondent." Moncada moved for reconsideration and adopted verbatim the Amicus Curiae Brief.

Katz and Moncada entered into a second agreement, which set the parameters for Moncada's restoration to the apartment she was evicted from on June 21, 2010 and specifically preserved the defenses raised in her Motion for Reconsideration.

With respect to the Housing Court proceedings against Martlett and Edwards-Melchor, the initial proceeding was dismissed without prejudice because of Katz's failure to prove compliance with the multiple dwelling registration requirements.

Katz never effected personal service on Edwards-Melchor because she vacated the apartment she shared with Martlett in the building at 142 West 75th Street before the first eviction proceeding commenced and therefore never

participated in any proceedings in Housing Court relating to her tenancy as Katz's tenant.

Martlett, who was represented by counsel, raised numerous defenses and counterclaims in her Answer to the Petition for Non-Payment during the first eviction proceeding. Martlett premised one defense on a claim that Katz breached the warranty of habitability by allowing Barnason, a known level-three sex offender, to work as a superintendant at 142 West 75th Street. In her Answer, Martlett raised a counterclaim for emotional distress damages relating to Katz's breach of the warranty of habitability.

In a subsequent Motion for Summary Judgment, Martlett contended that Katz violated his duty to provide for her security and therefore breached the warranty of habitability by employing Barnason, a known level-three sex offender, who had unfettered access to her apartment.

On March 24, 2010, the Housing Court denied Martlett's Motion for Summary Judgment and struck the defenses and counterclaims in her Answer premised on Barnason and his threat

to her security amounting to a breach of the warranty of habitability.

At trial, the testimony regarding Barnason's sexual harassment was barred.

The Summary Judgment Standard

Summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). In considering a summary judgment motion, the Court must "view the evidence in the light most favorable to the non-moving party and draw all reasonable inference in its favor, and may grant summary judgment only when no reasonable trier of fact could find in favor of the nonmoving party." Allen v. Coughlin, 64 F.3d 77, 79 (2d Cir. 1995) (internal citations and quotation marks omitted); see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). Affidavits submitted in opposition to summary judgment must be based on personal

knowledge from a competent source, and "set forth such facts as would be admissible in evidence." Patterson v. County of Oneida, 375 F.3d 206, 219 (2d Cir. 2004) (quoting Fed. R. Civ. P. 56(c)). Hearsay or other evidence that would be inadmissible at trial cannot be credited to defeat a summary judgment motion. See Id. at 219 ("an affidavit's hearsay assertion that would not be admissible at trial if testified to by the affiant is insufficient to create a genuine issue for trial.").

The Motion for Summary Judgment is Denied For Failure to File a Rule 56.1 Statement of Undisputed Facts

Federal Rule of Civil Procedure 56 provides that summary judgment shall be granted "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Local Rule 56.1 requires a party moving for summary judgment to "annex[] to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried." Loc. Civ. R. 56.1(a) (emphasis omitted). Courts in both the Southern and Eastern Districts of New York,

including this Court, have exercised their discretion under Local Rule 56.1 to deny defective motions for summary judgment. See, e.g., Barkley v. Olympia Mortgage Co., Nos. 04 Civ. 875, 05 Civ. 187, 05 Civ. 4386, 05 Civ. 5302, 05 Civ. 5362, 05 Civ. 5679, 2010 WL 3709278, at *14 (E.D.N.Y. Sept. 13, 2010); Felton v. King of Salsa, LLC, No. 09 Civ. 7918 (RWS), 2010 WL 1789934, at *2 (S.D.N.Y. May 4, 2010) (citing cases); Searight v. Doherty Enters., Inc., No. 02 Civ. 604, 2005 WL 2413590, at *1 (E.D.N.Y. Sept. 29, 2005).

Katz's failure to identify facts that are not genuinely disputed and to cite admissible evidence in support thereof also violates Federal Rule of Civil Procedure 56(c). As of December 1, 2010, Rule 56 mandates that a party "asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record...; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that the adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c).

Katz's affidavits in support of his motion are not sufficient to satisfy his obligations under Rule 56 and Local Rule 56.1. These affidavits contain argument and subjective characterizations, and thus are unhelpful in "assist[ing] the court in determining which facts are genuinely undisputed." Barkley, 2010 WL 3709278, at *14 (quoting Madison Maidens, Inc. v. Am. Mfrs. Mut. Ins. Co., No. 05 Civ. 4585, 2006 U.S.Dist. LEXIS 39633, at *5 (S.D.N.Y. Jun. 15, 2006)).

Accordingly, as Katz failed to follow Local Rule 56.1's directive to identify all material undisputed facts warranting summary judgment in his favor, his motion is denied.

The Motion to Dismiss the United States' Complaint on Grounds of Res Judicata is Denied

It has long been established that litigation involving private individuals does not preclude litigation by the Federal Government. See, e.g., Hathorn v. Lovorn, 457 U.S. 255, 268 n.23 (1982); City of Richmond v. United States, 422 U.S. 358, 373-74, n.6 (1975).

The doctrine of res judicata bars subsequent litigation by a party upon satisfaction of "a three-part test: (1) a final judgment on the merits by a court of competent jurisdiction; (2) the same parties, or their privies, as parties to the first judgment; and (3) the same cause of action in the second proceeding." Colonial Acquisition P'ship v. Colonial at Lynnfield, Inc., 697 F. Supp. 714, 718 (S.D.N.Y. 1988) (citing In re Teltronics Services, Inc., 762 F.2d 185, 190 (2d Cir. 1985)); see also Monahan v. N.Y. City Dep't of Corr., 214 F.3d 275, 285 (2d Cir. 2000). In addition, both federal and state law mandate that the party against whom res judicata is asserted must have had a "full and fair opportunity" to litigate its claims in the prior proceeding. See Locurto v. Giuliani, 447 F.3d 159, 170-71 (2d Cir. 2006); Landau v. LaRossa, Mitchell & Ross, 11 N.Y.3d 8, 14 (2008).

The general rule is that governmental agencies are not bound by private litigation when the agency's action seeks to enforce a federal statute that implicates both public and private interests. See Williamson v. Bethlehem Steel Corp., 468 F.2d 1201, 1203 (2d Cir. 1972) ("For purposes of res judicata or collateral estoppel, the private citizens in this [civil rights]

case are not bound by the Attorney General's action in the former case since they neither were parties to it, nor have interests such as to be in privity with the Attorney General.") (internal citations omitted). The statutory duties, responsibilities, and interests of the Department of Justice are broader than the discrete interests of any particular private party and take on added importance with respect to the Government's enforcement of the civil rights laws. See, e.g., United States v. City of Yonkers, 592 F. Supp. 570, 584 (S.D.N.Y. 1984); see also Wilmington Shipping Co. v. New England Life Ins. Co., 496 F.3d 326, 340 (4th Cir. 2007) ("Consistent with this understanding, a number of our sister circuits have held that, in light of the overarching national interest in ensuring the financial stability of pension plans and the inability of private plaintiffs to adequately represent this interest, the Secretary of Labor is not bound by the results reached by private litigants in ERISA suits."); EEOC v. Pemco Aeroplex, Inc., 383 F.3d 1280, 1291-92 (11th Cir. 2004) (observing that government agencies have responsibilities far beyond the legal interests of individual plaintiffs, and finding privity not established where EEOC brought Title VII enforcement action charging employer with companywide racial harassment

notwithstanding individual plaintiffs' cases against the same defendant); Secretary of Labor v. Fitzsimmons, 805 F.2d 682, 692 (7th Cir. 1986) (en banc) ("The Government is not barred by the doctrine of res judicata from maintaining independent actions asking courts to enforce federal statutes implicating both public and private interests merely because independent private litigation has also been commenced or concluded.").

The Attorney General's enforcement of the Fair Housing Act seeks to protect both public and private interests. Indeed, Congress empowered the Attorney General to seek civil penalties in court "to vindicate the public interest" and injunctive relief against individuals who flout the Act. 42 U.S.C. § 3614(d)(1)(C). Courts also have recognized the United States as the guardian of public interests under the Fair Housing Act, and therefore have held that the United States and private litigants are not in privity with respect to separate actions brought pursuant to the statute. See, e.g., Shimkus v. Gersten Cos., 816 F.2d 1318, 1320 (9th Cir. 1987) (holding private parties not in privity with the Government in a Fair Housing Act action are not bound by the terms of a consent order and may file their own lawsuit against the defendant); United States v. Town of Garner,

720 F. Supp. 2d 721, 731 (E.D.N.C. 2010). In this case, the United States has exercised its authority under 42 U.S.C § 3614(a) to seek civil penalties against Katz, in addition to injunctive relief and monetary damages on behalf of the Intervenor Plaintiffs.

The United States, in enforcing the Fair Housing Act, is "not merely a proxy for the victims of discrimination," but safeguards public interests independent of those of the Intervenor Plaintiffs. General Tel. Co. of the Northwest, Inc. v. EEOC, 446 U.S. 318, 326 (1980) ("Although the EEOC can secure specific relief, such as... damages... on behalf of discrimination victims, the agency is guided by 'the overriding public interest in equal employment opportunity... asserted through direct Federal enforcement.'") (quoting 118 Cong.Rec. 4941 (1972)). Katz cannot invoke res judicata to thwart the United States' deliberate law-enforcement decision to file suit and protect the public interest.

Katz has asserted that privity exists if "the claims in the prior action and the subsequent action are identical, the same witnesses, facts and legal theories are involved, and the

first action did not involve any defense unique to those parties." Def. Mem. in Supp. at 5. This conflates res judicata's privity requirement with the requirement that the prior and instant proceedings involve the same cause of action. In Zoll v. Ruder Finn, Inc., No. 02 Civ. 3652, 2003 WL 22283830 (S.D.N.Y. Oct. 2, 2003), cited by Katz, there was no dispute that the defendants in the two proceedings were in privity; indeed, the two defendants had formalized their status through an indemnification agreement. Id. at *7. The dispute facing the court involved assessing the identity of claims between the two actions. Id. at *8. Similarly, in Sweeper v. Tavera, No. 08 Civ. 6372, 2009 WL 2999702 (S.D.N.Y. Sept. 21, 2009), cited by Katz, the court expressly found that the interests of the new parties "were adequately represented in the previous action." Id. at *5. Privity requires an independent finding that a party's "'interests were adequately represented by another vested with the authority of representation.'" Monahan, 214 F.3d at 285 (quoting Alpert's Newspaper Delivery, Inc. v. The New York Times Co., 876 F.2d 266, 270 (2d Cir. 1989)).

Permitting landlord-tenant proceedings involving Intervenor Plaintiffs to preclude the Attorney General from

bringing a pattern and practice Fair Housing Act action under circumstances that "raise[] an issue of general public importance," 42 U.S.C. § 3614(a), would eviscerate the statutory scheme and undercut a powerful enforcement mechanism.

The Attorney General's enforcement of the Fair Housing Act is not "'simply [] a vehicle for conducting litigation on behalf of private parties.'" EEOC v. Waffle House, Inc., 534 U.S. 279, 288 (2002) (holding that EEOC could seek victim-specific relief for former employee under the Americans with Disabilities Act who was barred from bringing a private lawsuit) (quoting Occidental Life Ins. Co. of Cal. v. EEOC, 432 U.S. 355, 368 (1977)). Thus, "like the EEOC, the Attorney General should not be precluded from bringing suit on behalf of victims of discrimination, even if one of those victims could not sustain a private lawsuit." United States v. Fountain View Apartments, No. 08 Civ. 891, Dkt. No. 39 (M.D. Fla. Jan. 15, 2009); see EEOC v. Sidley Austin LLP, 437 F.3d 695, 696 (7th Cir. 2006) (holding that EEOC could obtain monetary relief on behalf of age discrimination victims notwithstanding victims' failure to timely file individual charges, as EEOC's enforcement authority is not derivative of legal rights of individuals even when

seeking to make individuals whole); EEOC v. Bay Ridge Toyota, Inc., 327 F. Supp. 2d 167, 173 (E.D.N.Y. 2004) (holding that federal government can seek injunctive relief under Title VII notwithstanding individual settlement and release). Thus, insofar as Katz contends that the inability of the individual Intervenor Plaintiffs to maintain individual claims precludes the United States from pursuing its pattern and practice claim or recovering individual-based relief against him, the contention is rejected.

Finally, the inability of the Housing Court to award relief otherwise available to the United States independently precludes application of res judicata. The doctrine of res judicata is subject to certain limitations, one of which is that it will not be applied if the initial forum did not have the power to award the full measure of relief sought in the later litigation. Davidson v. Capuano, 792 F.2d 275, 278 (2d Cir. 1986) (citations omitted); see also Marvel Characters, Inc. v. Simon, 310 F.3d 280, 287 (2d Cir. 2002) ("[R]es judicata does not bar subsequent litigation when the court in the prior action could not have awarded the relief requested in the new action."); Leather v. Eyck, 180 F.3d 420, 425 (2d Cir. 1999);

Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994). In this case, the United States requests remedies which fall outside the jurisdiction of the Housing Court, including equitable relief and civil penalties. See Broome Realty Assoc. v. Sek Wing Eng, 703 N.Y.S.2d 360, 361 (1st Dept. 1999) ("Except for proceedings for the enforcement of housing standards... and applications for certain provisional remedies..., the New York City Civil Court may not grant injunctive relief...") (internal citations omitted); New York City Civil Court Act ("NYCCCA") § 208(b) (vesting jurisdiction in Civil Court for "any counterclaim for money only, without regard to amount"). Insofar as the allegations of the United States (and Intervenor Plaintiffs) involve events occurring after March 13, 2008, the Housing Court is powerless to award even monetary damages to the Intervenor Plaintiffs; rather, civil penalties are awarded to the City of New York. See New York City Administrative Code §§ 27-2005, 27-2110; Aguaiza v. Vantage Properties, LLC, 893 N.Y.S.2d 19 (1st Dept. 2010).

Because the United States is not in privity with private parties, and because of the Housing Court's limited jurisdiction, Katz's motion to dismiss the complaint is denied.

The Motion to Dismiss the Intervenor's Complaint is Denied

The Housing Court is a court of limited jurisdiction, "devoted to actions and proceedings involving the enforcement of state and local laws for the establishment and maintenance of housing standards." NYCCCA § 110(a). The Housing Court is also vested with authority to consider "any counterclaim for money only, without regard to amount." NYCCCA § 208(b). All such counterclaims are permissive, not mandatory. See, e.g., Classic Automobiles, Inc. v. Oxford Resources, Corp., 612 N.Y.S.2d 32, 33 (1st Dept. 1994).

Housing Court actions for non-payment of rent and possession of property, including those faced by Intervenor Plaintiffs, often proceed by way of "special" or "summary" proceedings. See RPAPL Art. 7; N.Y. C.P.L.R. Art. 4; NYCCCA § 204; 22 New York Code, Rules, and Regulations ("NYCRR") § 210.42. "The summary process is a statutory device designed to achieve simple, expeditious and inexpensive resolution of disputes over the right to possession of real property." Glen 6 Assoc., Inc. v. Dedaj, 770 F. Supp. 225, 226 (S.D.N.Y. 1991).

As such, it is "based on petition, N.Y.R.P.A.P.L. § 731, and may proceed without formal pleadings, N.Y.R.P.A.P.L. § 732." Id. at 228. Tenants are afforded only five days to appear and answer. See RPAPL § 732(1). Consistent with the goals of simple, speedy and inexpensive resolution, the rules governing summary proceedings "contain no provision for discovery." Glen 6 Assoc., 770 F. Supp. at 228. Moreover, such proceedings can only be brought and maintained by a party with an actual possessory interest in the property, as defined by RPAPL § 721; third party practice is severely circumscribed. While the Housing Court has power to "join any other person or city department as a party," it can only do so only "in order to effectuate proper housing maintenance standards and to promote the public interest." NYCCCA § 110(d). Specifically with respect to summary proceedings, third party practice has generally been permitted only to add a governmental agency whose mission entails either rent assistance or enforcement of housing maintenance standards. See, e.g., Schanzer v. Vendome, 7 Misc.3d 1018(A), at *5-6 (Civ. Ct. N.Y. Cty. 2005) (citing cases and refusing to dismiss Department of Buildings); Trinity Holy Church v. Frazier, 88 Misc.2d 351, 252 (Civ. Ct. N.Y. Cty. 1976) (Commissioner of Social Services); Manhattan Plaza v. Snyder,

107 Misc.2d 470, 474-79 (Civ. Ct. N.Y. Cty. 1980) (New York City Department of Environmental Protection); Bryant Hoe Corp. v. Valentine, 83 Misc.2d 5 (Civ. Ct. Bx. Cty. 1975) (New York State Public Service Commission and Consolidated Edison).

The Second Circuit has recognized that such summary proceedings do not provide an adequate forum to litigate federal discrimination claims like the Intervenor Plaintiffs' federal Fair Housing Act claims. In Bottini v. Sadore Mgmt. Corp., 764 F.2d 116 (2d Cir. 1985), the Second Circuit held that the circumscribed jurisdiction of the Housing Court operated to deny Bottini a full and fair opportunity to adjudicate his Title VII discrimination claim, and thus he could proceed with his claim in federal district court. Id. at 121-22. In reaching its holding, the Second Circuit first observed that "city courts are courts of limited jurisdiction," and that the Housing Court in particular "plainly lacked jurisdiction to hear a Title VII employment discrimination claim." Id. at 121. Although the Housing Court had made a finding on Bottini's discrimination allegations in the course of adjudicating the holdover proceeding, "[t]he City Court's decision focused primarily on the merits of the holdover proceeding. It found merely that

Bottini's discharge was lawful, presumably because Bottini had challenged his eviction by claiming that his discharge from employment was unlawful." Id. Thus, although the Housing Court had made a finding on the merits of the discrimination, its limited jurisdiction meant that "it was not a competent or appropriate tribunal to hear" the discrimination allegations, and, therefore, "Bottini did not have a full and fair opportunity to litigate his claim" in the Housing Court and was not barred from bringing a Title VII claim in federal court. Id. at 122; see also Locurto, 447 F.3d at 171 ("An opportunity to litigate is neither full nor fair when a litigant is denied discovery, available in the ordinary course, into matters going to the heart of his claim."). Bottini applies equally to Intervenor Plaintiffs' Fair Housing Act violations. See Huntington, 844 F.2d at 935; Glover v. Jones, 522 F. Supp. 2d 496, 505-06 (W.D.N.Y. 2007).

Katz cited Okolie v. Paikoff, 589 F. Supp. 2d 204 (E.D.N.Y. 2008), for the proposition that the Housing Court had jurisdiction "to hear and adjudicate the Fair Housing Act claims alleged." However, in Okolie, the tenant asserted at least six separate claims in Housing Court, only one of which was

predicated on the Fair Housing Act. Id. at 207. The only claim dismissed by the district court on res judicata grounds was a due process claim predicated upon the tenant's deprivation of the property from which he was evicted in Housing Court proceedings. Id. at 214-15. Indeed, the court evaluated the merits of the tenant's Fair Housing Act claim in the course of examining the defendant's motion for summary judgment. Id. at 220. The Okolie court never suggested that the Fair Housing Act claims were barred by the prior proceeding in the Housing Court. Katz has also cited Turner v. Crawford Square Apartments III, L.P., 449 F.3d 542 (3d Cir. 2006), and Jamison v. Hart Realty, No. 04 Civ. 535, 2005 WL 2290309 (S.D. Ohio Sept. 20, 2005). The plaintiffs in those cases were challenging the propriety of their evictions and sought to have them reversed. As the court noted in Turner, "in both actions [in state and federal court] the thing being sued for is the same[:] Turner seeks to remain in her residence by obtaining injunctive relief that would, among other things, prevent her eviction." 449 F.3d at 548-49. See also Jamison, 2005 WL 2290309, at *1. Here, the United States and Intervenor Plaintiffs do not challenge the propriety of the Housing Court judgments or the legality of Intervenor Plaintiffs' evictions. Rather, they seek compensation,

equitable remedies, civil penalties, and punitive damages for discrimination and harassment suffered during the Intervenor Plaintiffs' respective tenancies. Although Katz's brief discusses the Rooker-Feldman doctrine, he admits that it does not apply in this case: "[T]he case at bar falls outside the reach of Rooker-Feldman." Def. Mem. in Supp. at 2. Neither the United States nor the Intervenor Plaintiffs are requesting this Court to reconsider the Housing Court's final judgments or the lawfulness of evictions; therefore, the Rooker-Feldman doctrine is inapplicable. See Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 291-93 (2005); Babalola v. B.Y. Equities, Inc., 63 Fed. Appx. 534, 536 (2d Cir. 2003); Reyes v. Fairfield Properties, 661 F. Supp. 2d 249, 275 (E.D.N.Y. 2009).

Similarly, while Katz references collateral estoppel, he does not contend that collateral estoppel bars relitigation of any particular issue, and the summary nature of the previous Housing Court non-payment proceedings in issue forecloses application of that doctrine. In any event, collateral estoppel does not pose a bar to the United States' action. See, e.g., United States v. Mendoza, 464 U.S. 154, 158 (1984) (nonmutual collateral estoppel does not extend to the United States); Pemco

Aeroplex, Inc., 383 F.3d at 1286-90 (finding EEOC not bound by either res judicata or collateral estoppel by prior judgment in prior suit where the agency did not present evidence during trial and had no authority to settle the prior suit, did not consent to be bound, did not tactically maneuver to avoid preclusion, and was not in a close relationship with the litigating party in the prior suit).

In this action, the Intervenor Plaintiffs seek money damages pursuant to the FHA and the City Law for the illegal conduct of Defendants, which they describe in their initial pleading at length.

The Housing Court did not reach a final decision on the merits regarding any defense or counterclaim premised on Defendants' sexual harassment of the Intervenor Plaintiffs. In Glover, 522 F. Supp. 2d 496, the plaintiff was a former tenant who sought to recover damages for sexual harassment perpetrated by the property manager pursuant to the Fair Housing Act following her eviction. Id. at 499-502. Defendants moved for summary judgment. Id. at 502. The landlord maintained that the plaintiff's claims were barred by res judicata and the property

manager contended that collateral estoppel barred the action. Id. at 504. The court held that the doctrine of res judicata did not apply where the prior action involved a judgment of eviction and a money judgment for back rent rendered by a court of limited jurisdiction which "was not a competent or appropriate tribunal to hear [the plaintiff's] allegations of [sex] discrimination." Id. at 505 (quoting Bottini, 764 F.2d at 121-22). The Glover court concluded that since the plaintiff had not been afforded a full and fair opportunity to litigate her sexual harassment claims in the prior proceeding, the action in housing court did not bar her from litigating those claims in a subsequent federal action. Id. at 506.

Even if the Intervenor Plaintiffs had actually sought redress for sexual harassment during the eviction proceedings Katz brought against them, as discussed above, the Housing Court would have been without jurisdiction to hear those claims and afford the full measure of relief the Intervenor Plaintiffs seek in this lawsuit. See Intervenor Complaint at 9 ("plaintiffs request a judgment granting them compensatory and punitive damages, costs, attorneys' fees and such other relief as the Court deems appropriate."). The Housing Court is a court of

limited jurisdiction. See N.Y.C.C.C.A. § 110, et seq.; Prometheus Realty Corp. v. City of New York, 911 N.Y.S.2d 299, 300-01 (1st Dept. 2010).

As noted above, in a summary non-payment proceeding brought pursuant to the RPAPL, such as the proceedings initiated by Katz, the Housing Court can afford limited relief. "[T]he only relief which can be granted... is an award of possession, and, if applicable, rent and/or use and occupancy[.]" Kiryankova v. Brovkina, No. 2002-1410K C, 2003 WL 21246185, at *1 (App. Term. 2nd & 11th Jud. Dist. Apr. 24, 2003). Courts within the Housing Part "lack[] jurisdiction to entertain a cause for damages." Id. (citing RPAPL §§ 741, 747; N.Y.S.C.C.A. § 110).

Therefore even if the Intervenor Plaintiffs successfully brought counterclaims for damages relating to the sexual harassment they suffered at the hands of Defendants during their tenancies, the Housing Court was without jurisdiction to afford the Intervenor Plaintiffs the relief they seek. As a result, res judicata cannot preclude the Intervenor Plaintiffs' claims in this lawsuit. See Rostant v. Swersky, 912

N.Y.S.2d 200, 201-02 (1st Dept. 2010) (doctrine of res judicata does not bar plaintiff from seeking treble damages for wrongful eviction in Supreme Court following Housing Court action to restore possession).

Conclusion

For the foregoing reasons, Defendant's motion for summary judgment is denied.

It is so ordered.

New York, NY
June 7, 2011

ROBERT W. SWEET
U.S.D.J.